

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**WP(C).No. 31391 of 2009(T)**

**1. P.N.MOHANADASAN,  
... Petitioner**

**Vs**

**1. THE STATE INFORMATION COMMISSION,  
... Respondent**

**2. STATE PUBLIC INFORMATION OFFICER &**

**3. RASHEED ANAPPARA,**

**For Petitioner :SRI.T.SETHUMADHAVAN**

**For Respondent :SRI.M.AJAY, SC, STATE INFORMATION  
COMMN**

**The Hon'ble MR. Justice P.N.RAVINDRAN**

**Dated :18/11/2009**

**O R D E R**

**P.N.RAVINDRAN, J.**

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**W.P.(C) No.31391 of 2009 - T**  
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**Dated 18th November, 2009**

**Judgment**

Heard Sri.Kodoth Pushparajan, the learned counsel appearing for the petitioner and Sri.M.Ajay, the learned standing counsel appearing for the first respondent.

2. The petitioner, who was working as Senior Superintendent in the office of the District Medical Officer of Health, Wayanad was promoted and posted as Administrative Assistant in the office of the District Medical Officer of Health, Pathanamthitta on 12.5.2008. He was also designated as the State Public Information Officer in the office of the District Medical Officer of Health, Pathanamthitta. After the petitioner was appointed as the State Public Information Officer, the third respondent submitted an application dated 17.8.2008

under the Right to Information Act, 2005, hereinafter referred to as 'the Act', wherein he requested for the following information:

"1. The number of hospitals in the districts, their names and addresses.

2. The names and addresses of all employees and doctors working in all Govt. Hospitals of the district.

3. The name, designation and phone number of all State Public Information Officers and Assistant Public Information Officers of the Hospitals and the expenses incurred for demonstrating the name boards of these officers with the copies of the vouchers.

4. The name and address of the hospitals having no beds."

3. The third respondent had in the application dated 17.8.2008, stated that he is the President of the Kerala Janavedi. The application for information was submitted on plain paper. On receipt of the application, the petitioner sent a letter dated 4.9.2008 to the third respondent calling upon him to furnish the details regarding his organization, the registration number and other details. He also called upon the

third respondent to prove that he is an Indian citizen. The third respondent thereafter filed a complaint before the State Information Commission under section 18 (1) of the Act. Shortly thereafter, the petitioner was transferred to Wayanad district.

4. Upon receipt of the complaint filed by the third respondent, the State Information Commission sent a letter dated 10.8.2009 to the State Public Information Officer in the office of the District Medical Officer of Health, Pathanamthitta calling for a report. A report was sent by the petitioner's successor on 23.12.2008 stating that the information sought by the third respondent was not provided for the reason that the request was made on plain paper and not on the letter head of the association of which the third respondent claimed he is the President and also for the reason that he had not produced any document to prove his citizenship. The State Information Commission posted the complaint for hearing on 21.3.2009. The third respondent was not present. He sought leave. The petitioner's successor Sri.K.Sukumaran Nair was present and he was heard. He stated that he joined duty as Administrative Assistant in the office of the District Medical Officer of Health, Pathanamthitta only on 12.1.2009, that the petitioner was the State Public Information Officer during the period from 26.8.2008 to 29.11.2008 and that the information sought by the third respondent was furnished on 6.3.2009.

The Commission thereupon passed Ext.P1 order holding that there was inordinate delay in furnishing the information. The Commission also decided to issue notice to the petitioner under section 20 (1) of the Act.

5. The Commission thereupon issued Ext.P2 notice dated 20.4.2009 calling upon him to show cause notice why action should not be taken against him under section 20 (1) of the Act. On receipt of Ext.P2 notice dated 20.4.2009, the petitioner submitted Ext.P3 reply wherein he raised a contention that the complaint was not maintainable. The petitioner contended that if the third respondent was aggrieved, he ought to have filed an appeal before the first appellate authority and that the third respondent ought to have, on receipt of the letter dated 4.9.2008 sent by him, contacted him as the third respondent had described himself as the President of the Kerala Janavedi and that as the application for permission was not filed in his individual capacity, he was called upon to prove his identity. The petitioner also contended that he was not responsible for the delay for the period from 30.11.2008 to 6.3.2009. The Commission thereafter heard the petitioner on 5.10.2009 and passed Ext.P4 order imposing a penalty of Rs.18,250/- calculated at the rate of Rs.250/- per day for a period of 73 days. This writ petition is filed challenging Exts.P1 and P4 orders and Ext.P2 show cause notice.

6. The petitioner contends that if the information sought was not given within 30 days from the date of receipt of the application, the third respondent had the right to file a first appeal under section 19 of the Act and therefore, the complaint filed by him under section 18 of the Act is not maintainable. He also contended that before Ext.P1 order was passed, he was not put on notice or heard. The petitioner contends that the post-decisional hearing held on 5.10.2009 before Ext.P4 order was passed cannot cure the illegality in Ext.P1.

7. Sri.M.Ajay, the learned standing counsel appearing for the State Information Commission submitted that as the petitioner did not furnish the information sought within 30 days, he can escape from punishment only if he is able to establish that he was prevented by reasonable cause from furnishing the information sought in time. He submitted that the remedies available to a person seeking information are concurrent and not mutually exclusive and therefore, the State Information Commission was competent to pass the impugned order.

8. I have considered the submissions made at the Bar by the learned counsel appearing on either side. The petitioner

admits that he had received an application under the Right to Information Act from the third respondent on 17.8.2008. The petitioner was admittedly the State Public Information Officer in the office of the District Medical Officer of Health, Pathanamthitta at that point of time. He was the State Public Information Officer till 29.11.2008. The petitioner declined to furnish the information sought by the third respondent on the short ground that the application for information was submitted on plain paper and not on the letter head of the Association of which third respondent had claimed that he is the President. He also called upon the third respondent to prove his identity and citizenship. These facts are not in dispute. In my opinion, as no particular form is prescribed under the Act or Rules framed thereunder for seeking information, the petitioner was not right in not acting on the third respondent's application. Further, the petitioner did not inform the third respondent that the information sought by him could not be furnished for the reasons stated in sections 8 and 9 of the Act. Apart from sending a letter on 4.9.2008, the petitioner did not do anything in the matter. Therefore, as the information sought by the third respondent was not furnished within the statutory period of 30 days, the application submitted by the third respondent under the Act should be deemed to have been rejected by operation of sub-section (2) of section 7 of the Act. The third respondent was therefore entitled to either prefer an appeal before the first appellate

authority or to file a complaint before the State Information Commission. The third respondent resorted to the remedy of filing a complaint before the State Information Commission under section 18 of the Act instead of filing an appeal before the first appellate authority under section 19 of the Act.

9. I have in W.P.(C) No. 31039 of 2009 held that the mere fact that a person seeking information is entitled to prefer a first appeal on the 31st day after the application for information was submitted is not a ground to hold that the State Information Commission is denuded of the power to enquire into a complaint that there was no response to the request for information or access to information within the time limit of 30 days. It was held that it is open to a person seeking information to either move the State Information Commission complaining about the inaction of the State Public Information Officer instead of filing an appeal, that the remedies are concurrent and that the mere fact that an appeal lies to the first appellate authority is not a ground to hold that the State Information Commission cannot exercise the jurisdiction vested in it under section 18 of the Act before the first appeal is heard and disposed of by the first appellate authority. I therefore overrule the petitioner's contention that the complaint filed by the third respondent before the State Information Commission which led to Exts.P1 and P4 orders was not maintainable in law.



10. I shall now deal with the petitioner's contention that the failure to hear him before Ext.P1 order was passed vitiates the entire proceedings. As stated earlier, when the petitioner did not furnish the information, the third respondent sent a complaint dated 10.11.2008 to the State Information Commission complaining that the information sought has not been furnished. Thereupon, the State Information Commission issued notice to the State Public Information Officer in the office of the District Medical Officer of Health, Pathanamthitta. The petitioner had by then been transferred to Wayanad district. The petitioner's successor sent a report to the effect that he joined duty only on 12.1.2009, that the information sought was given to the third respondent on 6.3.2009 and that the petitioner was the State Public Information Officer during the period from 26.8.2008 to 29.11.2008. The petitioner's successor also stated that the petitioner denied the information without reasonable cause while he was the State Public Information Officer. The State Information Commission thereupon decided to proceed against the petitioner under section 20 (1) of the Act. Ext.P2 show cause notice was thereafter issued to which the petitioner submitted Ext.P3 reply. Since the reply submitted by the petitioner in Ext.P3 was not acceptable to the Commission, Ext.4 order was passed imposing penalty under section 20 of the Act. In my opinion, even if the petitioner had been heard before Ext.P1 order was

passed, the reply which he would have given would have been the same as the reply given in Ext.P3. It is evident from the conduct of the petitioner that on receipt of the application for information from the third respondent (which could very easily have been furnished), he called upon the third respondent to prove his identity and citizenship. He also asked for details regarding the organization which the third respondent represents. In my opinion, the said action of the petitioner was totally uncalled for. Therefore, in the admitted facts of the case, no conclusion other than the one arrived at by the State Information Commission in Ext.P1 could have been arrived at when Ext.P1 was passed. Further, the petitioner could have avoided imposition of penalty under section 20 (1) of the Act only if he establishes that he was prevented by reasonable cause from furnishing the information sought within 30 days stipulated in the Act. A reading of Ext.P3 will indicate that there was no reasonable cause for not furnishing the information sought by the third respondent within the time limit of 30 days. All that the third respondent had sought was details regarding the number of hospitals in Pathanamthitta district, the names and addresses of the employees and doctors working in Government hospitals in the district, the details regarding the State Public Information Officers and Assistant Public Information Officers of the hospitals and other related details. Furnishing the said information to the third respondent would not have caused any prejudice to the State

or the officer furnishing the information. Instead of furnishing the information, the petitioner took a technical stand that the third respondent should prove his identity and citizenship and also furnish details of the organization which he represents. These are matters which do not fall within the ambit of sections 8 and 9 of the Right to Information Act, 2005. Therefore, the explanation offered by the petitioner for not furnishing the information within the stipulated period cannot be said to be a reasonable explanation. It cannot therefore be said that any prejudice was caused to the petitioner merely for the reason that he was not heard before Ext.P1 order was passed. In any case, he was heard before Ext.P4 order was passed. It was open to him at that stage to establish that he was prevented by reasonable cause from furnishing the information. As noticed earlier, going by the explanation offered by the petitioner in Ext.P3, it cannot be said that he has shown reasonable cause for not furnishing the information within the stipulated time of 30 days. I accordingly hold that there is no merit in the challenge to Exts.P1, P2 and P4.

For the reasons stated above, I hold that there is no merit in the writ petition. The writ petition fails and is dismissed. No costs.

P.N.RAVINDRAN

Judge